

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re E.J., Jr., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

E.J.

Defendant and Appellant.

E.J.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F074067

(Stanislaus Super. Ct. No. 517194)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County, and original proceedings; petition for extraordinary writ review. Ann Q. Ameral, Judge.

Melissa Chaitin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

E.J., in pro. per., for Petitioner.

No appearance by Respondent.

John P. Doering, County Counsel, and Carrie Stephens, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

In this dependency proceeding, the juvenile court continued reunification services for two months at a contested 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f)(1))¹ for E.J. (father) as to his now two-year-old son, E.J., Jr. (E.J.). Father appealed from the order, arguing the juvenile court erred in not extending his services more than two months and in not ordering a psychological evaluation. While father's appeal was pending in this court, the juvenile court terminated his reunification services and set a section 366.26 hearing. Father filed a writ petition from the setting order, raising the same issues he raised on appeal. On our own motion, we consolidated father's appeal and writ petition and affirm.

PROCEDURAL AND FACTUAL SUMMARY

The Stanislaus County Community Services Agency (agency) took one-month-old E.J. into protective custody in January 2015, because father and Ashley (father's wife and

* Before Levy, Acting P.J., Kane, J., and Poochigian, J.

¹ Statutory references are to the Welfare and Institutions Code.

E.J.'s mother) engaged in multiple domestic violence incidents while caring for E.J. The agency placed E.J. in foster care.

The juvenile court adjudged E.J. a dependent child, removed him from parental custody and ordered reunifications services for father and Ashley. Father's services plan required him to participate in domestic violence, parenting and substance abuse services and couples counseling. Approximately two weeks later, father contacted the police, claiming that Ashley was using methamphetamine and hit him in the face and choked him, leaving marks on his throat. She was arrested and charged with infliction of corporal injury on a spouse and assault with a deadly weapon. Father posted her bail and she was released.

By September 2015, the time set for the six-month review hearing, neither parent had completed their court-ordered services. Father started off well but repeatedly fell victim to Ashley's assaultive behavior and was dishonest and deceptive with his social worker, his clinician and his court-appointed attorney on multiple occasions. As a result, the agency recommended the juvenile court terminate reunification services for both parents.

The juvenile court terminated Ashley's reunification services at the six-month review hearing but continued father's services for another six months and amended his services plan to include individual counseling focused on co-dependency, lying and manipulative behavior.

Father continued to participate in reunification services and completed some of them. However, he was deceptive in significant ways. For example, he withheld information that he and Ashley were arrested in August 2015 for petty theft at a department store. According to the police report, father actively participated in the selection and concealing of store items. Father's social worker, Lisa Thompson, discovered the arrest in late November 2015 and confronted him with the information in early February 2016. Father told Thompson that Ashley stole women's clothing and hid

them in his backpack without his knowledge. He became aware of her theft when the loss prevention officer stopped them. He saw no need to tell Thompson about the arrest because he did not think it pertained to his dependency case.

Father also lied about maintaining an ongoing relationship with Ashley. He repeatedly told Thompson he did not have any contact with Ashley, yet communicated with her on Facebook. Thompson monitored their conversations beginning in October 2015, until she was blocked. In February 2016, Ashley gave birth to their daughter. Father claimed he did not know where Ashley and the baby were but was present during the delivery.

Father also lied to his clinician, Francine Ortiz, about his relationship with Ashley. He was in co-dependency counseling with Ortiz from October 2015, through late February 2016, and during that entire time maintained that he and Ashley were not in a relationship.

The agency recommended the juvenile court terminate father's reunification services at the 12-month review hearing, opining that E.J.'s overall safety and emotional well-being would be best served by proceeding with adoption planning.

In May 2016, the juvenile court convened a contested 12-month review hearing which concluded on June 1. Several witnesses testified, including father, Thompson and Ortiz. County counsel asked father about the Facebook posts. He denied communicating with Ashley on Facebook. He said she knew his password and "hacked" into his account.

Thompson testified that she first spoke to father about his lying and manipulative behavior in October 2015, but did not mention the Facebook posts to him until early February 2016. She also waited until February 2016, to discuss father's petty theft charge with him. She believed he had some responsibility to share the information with her and gave him a chance to "come clean." Thompson further testified she did not tell Ortiz that she believed father and Ashley were in an ongoing relationship until February 2016.

Ortiz testified that she became aware of the Facebook posts in March 2016. She said it would have been helpful in counseling father in co-dependency to know that he was posting with Ashley on Facebook.

The juvenile court concluded that Thompson unreasonably delayed in confronting father directly and informing his service providers about his lying and manipulative behavior. The court understood why she would wait “a little bit of time” to see if he would tell her about the theft and Facebook posts but believed she waited two months too long. The court continued the 12-month review hearing to August 1.

Several days after the hearing, the criminal court issued a protective order prohibiting Ashley from having contact with father.

Father appealed the juvenile court’s reasonable services finding and appellate counsel informed this court she could find no arguable issues to raise on his behalf. We granted father leave to file a letter brief setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.) Father filed a letter in which he contends the juvenile court erred in finding he was denied reasonable reunification services for two months. He argues it was longer than that—from early October 2015 to February 2016. He also contends it was unreasonable for the agency not to order a psychological evaluation for him.

Meanwhile, in August 2016, the juvenile court conducted the continued 12-month review hearing. Prior to the hearing, the agency filed a report recommending the court terminate father’s reunification services and set a section 366.26 hearing. The agency informed the court father and Ashley remained in contact despite the restraining order. In late June 2016, Ashley accompanied father to the agency’s office for a visit. Father lied, stating that the woman in his car was his sister and made up an elaborate story to explain why Ashley was spotted in the lobby at the same time. Father only admitted taking her there after the social worker said she would review the security tapes. Father also

admitted to having written “50-60% of the Facebook posts.” He claimed he wanted to be truthful but was afraid of confrontation and conflict.

Father testified he did not understand he was violating the restraining order when he gave Ashley a ride in June and believed that helping Ashley was in his daughter’s best interest. Since that incident, he and Ortiz discussed the nature of the restraining order and what safety measures he needed to implement. He said after that incident, he “completely” overcame his problem with lying.

The juvenile court found it would be detrimental to return E.J. to father’s custody pointing to his “complete inability to separate himself from [Ashley].” The court found the agency provided him reasonable reunification services and there was not a substantial probability E.J. could be returned to his custody by September 20, 2016, the day marking 18 months of services. Consequently, the court terminated father’s reunification services and set a section 366.26 hearing.

Father challenged the juvenile court’s setting order by extraordinary writ petition, filed in propria persona.

DISCUSSION

When a child is removed from a parent’s custody, the agency must make a good faith effort to develop and implement reasonable family reunification services responsive to the needs of that family. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.) “The adequacy of a reunification plan and of the [agency’s] efforts are judged according to the circumstances of each case. ... ‘The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success. [Citation.]’ ” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.) “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the [parent] during the course of the service plan, and made reasonable efforts to assist the

[parent when] compliance proved difficult” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414; italics omitted.)

Thus, whether a parent was provided reasonable services is a two part determination. The first determination is whether the reunification services selected by the agency are reasonably tailored to address the problems that necessitated the juvenile court’s intervention. The second determination is whether the agency made reasonable efforts to assist the parent in accessing the services selected. In other words, the services plan content and the agency’s efforts to assist the parent in complying must be reasonable.

The reunification services are ordered into effect at the dispositional hearing and remain the order of the juvenile court unless the parent succeeds in having them modified by direct appeal from the dispositional orders or by filing a petition under section 388. In contrast, the reasonableness of the agency’s efforts is fluid and the juvenile court must determine at each review hearing whether the parent was provided reasonable services during the period under review.

On a challenge to the juvenile court’s reasonable services finding, appellant bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) We review the evidence in a light most favorable to the respondent, indulging in all legitimate and reasonable inferences to uphold the finding. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court’s finding, we will not disturb it. (*Ibid.*) Moreover, under our review, services need not be perfect to be reasonable. Rather, the “standard is ... whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

We begin with father’s contention the agency failed to provide him a psychological evaluation. He argues he was a victim of repeated domestic violence and was never evaluated for “battered woman’s syndrome” or Stockholm syndrome as an

explanation for his co-dependency and dishonesty about his ongoing contact with Ashley. Undoubtedly, a psychological evaluation would have shed some light on father's behavior. However, the agency did not recommend one as part of father's services plan and he did not object to the plan as ordered by the juvenile court either by appealing from the dispositional order or subsequently filing a section 388 petition requesting one. Moreover, neither he nor his attorney raised the issue of his need for a psychological evaluation before the juvenile court. Consequently, father acquiesced to a services plan that did not include a psychological evaluation and forfeited his right to argue the plan as ordered is unreasonable.

Next, we turn to father's contention the juvenile court should have continued his reunification services for more than two months. Father claims that Thompson had information that was "vital" to his ability to address his co-dependency and dishonesty yet waited from October 2015 to February 2016, to confront him with the information or inform his clinician and attorney about it. Therefore, he contends the juvenile court should have determined that he did not receive reasonable reunification services during that timeframe and erred in only continuing his services for two months. We disagree.

The juvenile court concluded it was reasonable for Thompson to wait before disclosing her concerns about father and Ashley but not as long as she did. The court further concluded she waited two months longer than she should have to disclose the information, resulting in its finding father was not provided two months of reasonable reunification services. In order for father to meet his burden of showing that he did not receive reasonable reunification services for the period of October 2015 to February 2016, he would have to show that it was not reasonable for Thompson to delay *at all* in disclosing her concerns. He would be hard pressed however to do so, considering the fact that his ability to be honest and forthcoming was a major focus of his services plan. If Thompson immediately confronted him with his lies, he would not be able to work

through the process of deciding to be honest and forthcoming on his own and therefore would be deprived the ability to demonstrate his progress.

We find no error and affirm.

DISPOSITION

The juvenile court's order issued on June 1, 2016, continuing father's reunification services for two months is affirmed. The juvenile court's finding father was provided reasonable reunification services and its orders terminating his reunification services and setting a section 366.26 hearing issued on August 1, 2016, are also affirmed. This opinion is final forthwith as to this court.